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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-154

In the Matter of

Amendment of Part 74-E Rules.
Aural Broadcast Auxiliary
Stations.

REPORT AND ORDER

Adopted: February 24, 1995; Released: March 7, 1995

By the Commission:

INTRODUCTION

1. We herein amend Sections 74.550 of our rules to permit certain unapproved transmitters in the band 944-952 MHz which have been displaced by approved equipment for primary use to be retained for backup purposes at Aural Broadcast Auxiliary Stations.

BACKGROUND

2. In 1985, the Commission adopted a *Report and Order* in MM Docket No. 85-36 which required all new transmitters for aural studio transmitter-link/intercity relay (STL/ICR) operation in the 944-952 MHz frequency band to be approved prior to marketing. Continued use of existing non-approved equipment was allowed for a period ending on July 1, 1990, which was later extended to July 1, 1993.¹

3. In June of 1993, the *Notice of Proposed Rule Making*² ("Notice") in the above-entitled matter was issued in response to informal suggestions from various parties that the Commission should permit the retention and use of existing unapproved aural broadcast auxiliary transmitters for backup purposes. This proposal would permit broadcasters to retain and use their existing unapproved primary equipment as backup equipment after it was displaced from primary service by approved equipment under the requirements of our rules. The proposal was intended to avoid burdening licensees with additional expenditures to replace infrequently used backup transmitters with approved equipment, and to permit the installation of backup facilities in situations which have not previously been practicable. Backup auxiliary service facilities are used by many broadcast station licensees to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. Thus, the Commission concluded that limited short-term backup use of unapproved equipment

could be permitted. The Commission, therefore, proposed to allow all transmitters removed from primary service to be retained for backup purposes, provided no interference is caused and that such transmitters are not used for more than 720 cumulative hours per year without explicit Commission authority.³ In addition, the *Notice* stated that the Commission would allow licensees to retain unapproved equipment for backup purposes until final action is taken in this proceeding, and thereafter if the proposed rule is adopted.

COMMENTS

4. Comments supporting adoption of the proposed amendments of Section 74.550 were received from the National Association of Broadcasters ("NAB") and National Public Radio ("NPR"). No opposing comments were received.

5. NAB states that many stations have purchased new equipment to comply with the current requirements of Section 74.550 of the Commission's rules. NAB notes that given the current financial conditions prevailing in the broadcast industry, most licensees cannot justify purchasing additional equipment for backup facilities. However, while their old equipment does not meet the new more stringent standards, NAB and NPR suggest the old equipment is fully functional and is more than adequate for backup purposes.

DISCUSSION

6. We have reviewed the comments and conclude for the reasons advanced in the *Notice* that adoption of the proposal would serve the public interest. We further agree with NPR that there should not be any significant adverse consequences from continued use of unapproved STL/ICR equipment under the conditions proposed in the *Notice*. These backup transmitters can maintain the broadcast station's ability to provide continued service in the event of primary equipment failure without undue risk of harmful interference. However, we caution licensees that the unapproved equipment has wider channel bandwidth, and thus, may be prone to cause interference, especially in congested spectrum-use areas. Licensees must not use the unapproved equipment on a regular or primary basis and stations using such equipment should be prepared to demonstrate that it normally uses approved equipment. A licensee is not permitted to obtain unapproved equipment from other licensees or other sources for backup use. Our action here is intended only to permit the retention and continued use, in a backup role of equipment that a licensee already possesses.

PROCEDURAL MATTERS

7. *Regulatory Flexibility Act.* We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because there will not be a significant negative economic impact on a substantial number of

¹ See *Order*, 5 FCC Rcd 738 (1990).

² *Notice of Proposed Rule Making*, in MM Docket No. 93-154, 8 FCC Rcd 4106 (1993).

³ Within the allowed 720 cumulative hours of operation, there are no limits on the amount of permitted consecutive or number of separate uses of unapproved equipment.

small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq (1981).

8. Therefore, IT IS ORDERED that pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, that effective [30 days after publication in the Federal Register], Part 74 of the Commission's Rules and Regulations IS AMENDED as set forth in the Appendix. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

9. Further information may be obtained from Bernard Gorden, Mass Media Bureau, Engineering Policy Branch, (202) 632-9660.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Title 47 of the Code of Federal Regulations is amended as follows:

PART 74 -- EXPERIMENTAL, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section 74.550 is revised to read as follows:

§74.550 Equipment authorization

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment. Equipment which has not been type approved under the equipment authorization program and which was in service prior to July 1, 1993, may be retained solely for temporary uses necessary to restore or maintain regular service provided by approved equipment, because the main or primary unit has failed or requires servicing. Such temporary uses may not interfere with or impede the establishment of other aural broadcast auxiliary links and may not occur during more than 720 cumulative hours per year. Should interference occur, the licensee must take all steps necessary to eliminate it, up to and including cessation of operation of the auxiliary transmitter. All unapproved equipment retained for temporary use must have been in the possession of the licensee prior to July 1, 1993, and may not be obtained from other sources. Requirements for obtaining a grant of equipment authorization are contained in subpart J of part 2 of the Rules.

Equipment designed exclusively for fixed operation shall be authorized under notification procedure (see §2.904(d) of this chapter).

Note: Consistent with the note to §74.502(a), grandfathered equipment in the 942-944 MHz band and STL/ICR users of these frequencies in Puerto Rico are also required to come into compliance by July 1, 1993. The backup provisions described above apply to these stations also.